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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,412	07/11/2005	Hermann-Josef Schief	26463U	8454

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NATH & ASSOCIATES  
112 South West Street  
Alexandria, VA 22314

EXAMINER

MIGGINS, MICHAEL C

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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02/04/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/518,412

Applicant(s)

SCHIEF ET AL.

Examiner

Michael C. Miggins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/11/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### **Examiner's Comments**

1. For purposes of examination the terms "contain" or "containing" have been construed as comprising. It is suggested applicant change these terms in the claims wherever they appear to - - comprising - -.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-9 contain the term "preferably" throughout the claims. The term "preferably" is not a positive limitation and it is not clear what is included or excluded in the claims and thus the metes and bounds of the claim are not clearly set forth.

Applicant should delete the term "preferably" wherever it occurs in claims 1-9.

Claims 1-9 contain the term "alternatively" throughout the claims. The term "alternatively" is not a positive limitation and it is not clear what is included or excluded in the claims and thus the metes and bounds of the claim are not clearly set forth.

Applicant should delete the term "alternatively" wherever it occurs in claims 1-9.

The groups of compounds recited in claim 9 are not in proper Markush format.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 3-5 and 8-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Pophusen (US 6541087).

Pophusen discloses a multilayer planar or tubular film having seven layers and having a layered structure of outside to inside of polyamide, EVOH, polyamide, polyolefin adhesive mixture with adhesion promoter, polyolefin, polyolefin adhesive mixture with adhesion promoter, polyamide (column 5, line 45 through column 6, line 38, column 7, lines 7-10, column 9, lines 15-45 (Ex. 1-2)).

Pohusen discloses that the layers of polyolefin contain additional polyolefins, polypropylene etc., layers containing polyamide contain MXD6, wherein the polyamide layers contain PA 6, 66, 6/66, 11, 12 etc. (column 6, line 38, column 7, lines 7-10).

6. Claim 2 is rejected under 35 U.S.C. 102(a) as being anticipated by Blok et al. (WO 02/26494 A2, cited by applicant).

Blok discloses a multilayer planar or tubular film (page 1, lines 2-4) having seven layers and having a layered structure of outside to inside of a polyethylene, adhesive mixture with malaeic anhydride adhesion agent, a polyamide, EVOH, a polyamide, adhesive with malaeic anhydride adhesion agent, a polyethylene (page 10, lines 19-36).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pophusen (US 6541087) in view of Tajiri et al. (US 6177159).

Pophusen fails to disclose wherein the barrier layer alternatively contains MXD6.

Tajiri discloses a barrier layer which contains MXD6 (column 2, lines 30-35) in a food container (column 1, lines 5-10) for the purpose of providing improved oxygen gas barrier properties.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided wherein the barrier layer contains MXD6 in Pophusen in order to provide improved oxygen gas barrier properties as taught or suggested by Tajiri.

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9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pophusen (US 6541087) in view of Lulham et al. (US 5595623).

Pophusen fails to disclose that the polyamide layer alternatively contain an ionomer.

Lulham discloses a barrier layer with ionomer layers bonded to both surfaces of the barrier layer (column 4, line 35 through column 5, line 11) in a food container (column 1, lines 10-22) for the purpose providing improved barrier properties and/or mechanical properties.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided that the polyamide layer alternatively contain an ionomer in Pophusen in order to provide improved barrier properties and/or mechanical properties as taught or suggested by Lulham.

### ***Conclusion***

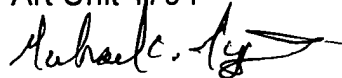
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Michael C. Miggins  
Primary Examiner  
Art Unit 1794



MCM  
January 7, 2008